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The Factual and Normative Dimensions of Equality

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Abstract

In order to be able to observe the dictates of equal treatment and material equality, it must become apparent, first, who is to be treated equally with whom and is the subject of material equality, and, second, what these dictates mean and entail. In response to the first question, a moral value such as dignity may be said to be decisive, but this position is unproductive and obscure. My alternative focuses on a characteristic that those who seek to be treated equally themselves share in common: rationality. Two or more beings are invariably considered each other's equals in regard to a characteristic; this is what basic equality means. Several characteristics are possible; I argue that rationality is a nonrandom characteristic. Rational beings should, then, treat other rational beings equally, but this is not a moral demand; rather, self-interest is decisive. This provides the basis for formal equality. It is difficult, by contrast, to determine at what point the demands of material equality are met, for 'material equality' may be interpreted in various ways, and even if one adheres to a strict interpretation, it must be acknowledged that this is compatible with conflicting perspectives, none of which is compelling.

Keywords: Formal equality, material equality, rationality, self-interest

Introduction

Equality may be said to be an important value, but the problem with this statement is that it may be specified in several ways. This does not entail that equality itself can mean anything and is thus senseless, but it does indicate that it must become clear in which respect(s) certain beings may be said to be equal or should be treated equally. The descriptive aspect (namely, the issue of which beings *are* equal) and the normative aspect (namely, the issue of which beings *should be* treated equally) have been presented here together, but it is important to realize that the latter aspect cannot straightforwardly be derived from the former; indeed, showing how both aspects may be integrated is one of the goals of this article. If I am successful in reaching that goal, it should become clear what the basis for formal equality is. Formal equality includes legal equality (or equality before the law), which entails the right to equal treatment, and political equality.

Formal equality is a normative principle. In order to be able to put it into practice, it must first become clear *which* beings are to be treated equally. The first two sections are focused on this issue. In the first section, I inquire whether an appeal to egalitarianism may be justified. The factual aspect that forms the basis of formal equality is inquired in section 2. Once these 'preliminary studies' have been completed, formal equality itself can be discussed. *Formal* equality must be distinguished from *material* equality. Difficultly, 'material equality' may be specified in various ways. The relation between formal and material equality will be explored in the final sections, with special attention for the perspective of John Rawls.

Equality and Egalitarianism

Formal equality demands that certain beings be treated equally. This means that it is not a state of affairs but rather a norm. This issue will be discussed below. It must be preceded by an analysis that clarifies which beings are concerned, an issue that is often disregarded or too easily dismissed as something that is supposedly evident. The question *of what basis* certain beings are considered equals must, in other words, be answered before the issue of formal equality can be addressed.

It is clear that the requirement of specifying equality as *identity* (in the sense that the beings in question must be identical) would be too demanding (and, depending on the precise meaning of 'identity', not even conceivable). Approximate equality is a viable alternative, but it must still become clear *which beings* are approximately equal and *in what respect*. There are various possibilities to proceed. Racial

distinctions have, in some states, implicitly or explicitly, been accepted by many individuals for long periods, and (anticipating the issue of formal equality) women have, on the basis of sex, been deprived of suffrage in many states until the beginning of the 20th century; they were also disadvantaged with respect to access to education. Apart from these characteristics, religion may be mentioned here as the basis to distinguish between individuals.

These factors (race, sex, and religion) are still relevant for considering individuals (un)equal in several places. The same may, more fundamentally, be said of humanity as such, which becomes apparent when the position of (non-human) animals is considered. The significance of the fact that inequality is at issue here is not, of course, that animals do not have rights such as suffrage (as they would be unable to exercise them), but that (depending on the specific laws of the state in question) some of them may be used as means in such a way that few people would presumably consider it acceptable to be in that position themselves.

A possible candidate that may provide the basis for formal equality is egalitarianism. Those who appeal to egalitarianism hold (or presuppose) the equal 'worth', or 'dignity', of every being (in accordance, of course, with a conception of 'every being'). One may be led to think that supporters of egalitarianism are thus liberated from the burden of pointing out why a certain characteristic, which may be said to be irrelevant, should be decisive (from the consideration that 'dignity' cannot be determined to exist in the same way as, for example, someone's practicing a religion), but, as I will show, this line of argument leads to another problem, on the basis of which this alternative will prove to be just as little productive.

Dworkin indicates what, according to him, the relevance of the concept of 'human dignity' is:

> "Anyone who professes to take rights seriously, and who praises our Government for respecting them, must have some sense of what that point is. He must accept, at the minimum, one or both of two important ideas. The first is the vague but powerful idea of human dignity. This idea, associated with Kant, but defended by philosophers of different schools, supposes that there are ways of treating a man that are inconsistent with recognizing him as a full member of the human community, and holds that such treatment is profoundly unjust. The second is the more familiar idea of political equality. This supposes that the weaker members of a political community are entitled to the same concern and respect of their government as the more powerful members have secured for themselves, so that if some men have freedom of decision whatever the effect on the general good, then all men must have the same freedom. I do not want to defend or elaborate these ideas here, but only to insist that anyone who claims that citizens have rights must accept ideas very close to these." (Dworkin, 1977, pp. 198-99).

Importantly, these two ideas are two aspects of the same basic point: the (supposed) '(human) dignity' (which is the first idea) is supposed to serve as a shield, protecting (human) beings from the unjust treatment in question, but the same concern and respect to which the weaker members of a political community are supposedly entitled (as a result of the second idea) apparently has the same basis. (The alternative would be that political equality has no basis at all, or some basis that is left unexpressed here.) So 'human dignity' seems to be the (abstract) equivalent of political equality, in this line of reasoning. This does not derogate, however, from the fact that 'human dignity' still stands in need of clarification.

Dworkin does not define '(human) dignity'. He does appeal to Kant, however, part of whose practical philosophy is focused on expounding this idea. Kant holds that being autonomous is a necessary condition for being an end in itself (Kant, 1908, p. 87). Kant defines autonomy (of the will) as "the quality of the will by which it is a law to itself (independently of any quality of the objects of volition)" (Kant, 1903, p. 440). Autonomy cannot be proved to exist and must therefore, according to Kant, be postulated (Kant, 1908, pp. 122-34). 'Dignity' is associated with the capacity to act morally (Kant, 1903, p. 435). Accordingly, autonomy is the basis of the 'dignity' of every reasonable creature (Kant, 1903, p. 436). This is the basis of 'an inalienable dignity' (Kant, 1903, p. 436).

Practical reason is the decisive faculty here. By contrast, *theoretical* reason, while providing a basis to differentiate between human beings and animals because the former but not the latter are endowed with it, renders a distinction that only points to a relative difference (Kant, 1907, pp. 435-36). An important difficulty is that autonomy (in this sense) cannot be proved to exist. Indeed, this is, as I indicated above, the very reason why it must be postulated. (This is not the proper place to present and evaluate Kant's meticulous analyses.)

An alternative perspective stresses the importance of the capacity to suffer; all human beings and (dependent on the definition of 'pain') a number of animals would accordingly qualify as beings who have 'dignity'. One may wonder whether 'dignity' is the appropriate term in this case, but since it is unclear what, if anything, 'dignity' means, this is a minor issue.

The foregoing provides sufficient reason to conclude that the idea of 'dignity' and, by extension, the idea of 'egalitarianism', is at least problematic, so that it seems sensible not to use it as the basis for formal equality lest whatever is derived from formal equality be questionable as well.

Basic Equality

In the previous section, the issue that certain beings may be considered equal on account of the fact that they share one or more characteristics (such as race and sex) was briefly addressed. Such characteristics may be dismissed as irrelevant, but only if an alternative, on the basis of which the irrelevance indeed becomes apparent, is already available. After all, in the absence of such an alternative, it would not be possible to determine on what (alternative) basis certain beings are equals, nor could it be clarified *why* they are irrelevant, for the alternative is itself supposed to provide this reason.

In order to illustrate the first point, it must become clear what abstracting from all characteristics would mean. Presuming – for the sake of argument – that it would be possible to abstract in this way, no basis from which to start would be available: if no characteristic is to be decisive, nothing remains to serve as a criterion. One would have to decide that certain beings are to be considered equals, but *which* beings and *why* could not be determined. Kelsen rightly indicates that, since the principle of 'to each his own' may be interpreted in various ways, one must conclude that the decisive question of what is equal is not answered by the so-called principle of equality (Kelsen, 1953, p. 26).

Another objection may be raised if the presumption that this abstraction is possible is not accepted. It may be questioned whether a being can still be identified as such if *all* characteristics are disregarded. In the case of a human being, even the shape of the body (which, presumably, is an irrelevant element) is specifically human, so that the abstraction would result in the impossibility of distinguishing between human beings and animals, an issue that will be revisited briefly below. Such a consideration adds to the difficulty in deciding which beings are equal and are to be considered as such.

The foregoing leads to the conclusion that a certain characteristic must be accepted in order to tackle the equality conundrum. A moral principle may be considered, but this brings with it a considerable burden of proof, on the basis of similar considerations as those which were presented in the previous section. First of all, the meta-ethical question may be raised as to what 'moral value' or 'moral goodness' means (Mackie, 1977, pp. 15-17); second, even if the first issue may be resolved, the following difficulty readily emerges: *which* moral perspective is the right one? Neither of these problems affects my position, however, since my perspective is amoral, meaning that I do not appeal to moral elements, so there is no need to confront these problems here.

Finding a characteristic is tantamount to establishing factual equality with respect to that characteristic. As I have already said, equality is not to be taken to imply identity, so that factual equality in practice means approximate equality. There are a number of varieties with respect to which factual equality can exist; selecting one of those varieties as the relevant one results in what I call basic equality. The beings that specify basic equality as the result of a selection process are (of course) those who are capable of qualifying the characteristic as relevant. It will by now have become clear that 'basic equality' is an abstract concept that may be specified in various ways. The abstract concept may seem to be redundant (since factual equality and the actual specification of basic equality may seem to suffice in this account), but 'basic equality' is conceptually indispensable: it serves as an intermediary between factual equality and the specification of basic equality.

The foregoing may be illustrated as follows. Suppose a group of people is hunted by a group of lions. If the humans (quickly) deliberate in order to concoct a plan to escape the lions, they thereby acknowledge – whether they realize this or not – the existence of basic equality: they share a characteristic the lions lack. They are thus equal in that respect, while they differ in the same respect from the lions. In the case of the lions, basic equality also exists (in accordance with which they are equal among themselves and simultaneously unequal from the prey they hunt), albeit implicitly, since lions, it seems justified to say, cannot even realize that this state of affairs exists.

The relevant basic equality in the case of the humans that are being hunted is acknowledged on the basis of reason, while it may in the case of the lions be said to be based on their strength and the attributes that make them (instinctively) 'acknowledge' one other as members of the same species and, specifically, the same pride. There are a number of other characteristics on the basis of which factual equality (and basic equality) can be established, not only insofar as these two groups are concerned separately, but also with respect to all of these beings (an example of the latter case is that they all have a heart), none of which is relevant.

It may be inferred from the foregoing inquiry what the relevant basic equality is when human beings (and alien beings, if they exist and are sufficiently similar to human beings) are concerned insofar as formal equality is at issue: reason. This is the proper place to revisit the issue that was addressed in section 1: it is possible for characteristics such as race and sex to be decisive in specifying basic equality. Not all human beings are thus considered equal, but people are rather categorized and divided into groups, which brings with it the possibility to treat them differently;

this is the prescriptive aspect of equality, which will be inquired in the next section. It is possible, as is evidenced by many examples in history, that differences on the basis of such characteristics are decisive, even where citizens in democratic states are concerned, in granting (or acknowledging the existence of) (certain) rights.

This is, of course, decided in accordance with the views and preferences of those who are in power. In a democratic state, this is (the majority of) the people; in an indirect democracy, those who are elected (and, in a parliamentary democracy, those who are accountable to them) are supposed to act in accordance with the interests of the people. There is no guarantee, in this state of affairs, that the legal and political equality of all citizens will be guaranteed, or even that the majority of the people will take the interests of one or more minorities seriously to any degree, and in an extreme scenario suffrage may be withheld from them, so that being endowed with reason is no sufficient condition to be granted certain rights, not even if other citizens (with the same relevant capacities) do have those rights.

One may hold that such a perspective is (at present) morally objectionable, but this means that one appeals to a *particular* moral standard, namely, the standard which is adhered to by the (present) majority, unless one is willing to accept the burden to prove that (and why) that standard corresponds to morality (with an absolute nature). The alternative is accepting that the moral dimension must be reduced to the political dimension.

Basic equality is specified by appealing to reason, which can – obviously – only be done by those who are reasonable in the first place. This does not mean that every being who qualifies is *equally* reasonable (or always acts reasonably), let alone intelligent; nor is an idea such as *practical* reason (in Kant's sense) to be invoked. This means that the term 'basic rationality' may be used to refer to what I mean. 'Reasonableness' and 'rationality' may thus, at least in the sense intended here, be considered synonyms. This does not negate the significance of the difference between 'Vernunft' and 'Verstand' in Kant's philosophy (or between 'ratio' and 'intellectus' in medieval philosophy), since a distinction is concerned there which is not relevant to the situation to which I refer.

The relevance of rationality is that it is possible (for rational beings) to determine systematically which rights are to be granted (or acknowledged), and to whom. For example, once it becomes apparent that women are, just as men, endowed with the faculty of reason, and no relevant differences may be said to exist on account of one's race or worldview, the most consistent candidate to specify basic equality

is reason (or rationality, which, in accordance with what said above, is the same); again, reasonable beings are themselves those who reach this conclusion.

Still, the question presents itself why a selection of those who are reasonable would accept this conclusion if they are in power, and able to withhold certain rights from others, notwithstanding the fact that those others are also reasonable, since it may be advantageous for them to ignore or dismiss that fact. There are, however, two reasons why such a stance is not tenable, neither of which necessitates resorting to a moral view, so that there is no reason to commit to a more 'ambitious' account of reason than mine.

First, those who are not considered equals by those who are in power – and whose legal and political equality is not, as a consequence, acknowledged, in conflict with the yet to be discussed dictates of formal equality – may, being (*ex hypothesi*) rational, realizing that they have more to gain from refusing to accept this state of affairs than from resigning themselves to their position, rebel against those they may consider their oppressors, demanding that their basic rationality (still) be recognized. Peaceful protests may sometimes suffice to reach the desired goal; the introduction of women's suffrage in the wake of the suffragettes' demonstrations is a case in point.

Second, it is inconsistent to appeal to basic rationality as the basis for formal equality in one's own case without being willing to acknowledge this in the case of others. This is the case, for example, if basic rationality is not acknowledged on account of someone's race; in such a case, basic racial equality rather than basic rationality is considered the proper specification of basic equality, and only a semblance of basic rationality remains. Rational beings realize that characteristics such as race and sex are no more relevant characteristics in specifying basic equality than one's shoe size.

A number of objections may be raised to this conception of (basic) equality. One may point to the dividing line between human beings and animals. The argument from marginal cases (Narveson, 1977, p. 164) concerns the issue that no relevant distinction may be made between animals and human beings whose rational capacities do not extend beyond those which (some) animals have. I have already, in section 1, mentioned (some) animals' capacity to suffer; is this not a reason to conclude that basic rationality is no viable specification of basic equality and must be replaced by a basic capacity to suffer?

Indeed, the capacity to suffer is a crucial element in the analysis of a number of authors, such as Singer, who observes: "If a being suffers, there can be no moral justification for refusing to take that suffering into consideration." (Singer, 2011, p. 50). A *moral* criterion is apparently at issue, while I have presented a theory that does not require an appeal to such a criterion. Even a theory such as Singer's is unsatisfactory from a meta-ethical perspective; this issue need not be discussed here, however, since an appeal to one or more moral principles is (in my opinion) not necessary to resolve the present issue.

There is an interest for those who are basically rationally equal not to withhold certain rights from those who are cognitively impaired (namely, those rights which are still relevant for them), since they themselves may, as a result of an accident or illness, lose (some of) their rational capacities, in which case they may wish to be treated better than animals. However, first, some may not want to continue to live if those capacities are lost, so that basic rationality is not intended to safeguard any interests they may have at that point, second, some believe in reincarnation, relativizing the dividing line between animals and human beings, and third, some people simply want to take good care of (certain) animals, and not necessarily on the basis of a moral view.

In response to the first point, it cannot be ruled out, in a democratic state, that it will be decided, by a majority vote, that those whose rational capacities are diminished to a certain level (leaving the issue here how this may be measured) should not be treated significantly differently than animals. If they are not allowed to request that their life be terminated if they suffer (or may be presumed to suffer) because of a significant diminishment of their rational capacities (not being able to make the request anymore for the same reason), by means of an advance euthanasia directive, they have an interest in ensuring that the circumstances in which they (must) continue to live will be optimal.

With respect to the second point, a similar response may be given. If the majority believe in reincarnation, legislation may be introduced to realize special protection for (certain) animals, even to such an extent that the relevant rights are protected (resulting, for example, in a prohibition to kill (certain) animals). This does mean that basic rationality will not be the specification of basic equality, but that is no reason to conclude that the argument conflicts with my account. The third point concerns an issue that is not decided by specifying 'basic equality'. A majority vote will result in legislation to protect the relevant rights of (certain) animals, just like in the case just discussed, but not on the basis of a certain conception of basic equality.

Formal equality itself has not been discussed in sufficient detail. It was necessary to first analyze the preliminary matter of *who* may be deemed a subject of formal equality lest formal equality lack a (credible) basis. Having provided the analysis, I now turn to the vital subject matter.

Formal Equality

The previous section was focused on indicating *which beings* are to be the subjects of formal equality, laying the groundwork for the subsequent inquiry, which is focused on the question of why formal equality is to be accepted as a directive.

This question cannot be answered in the abstract, which is the reason why basic equality (and specifically basic rationality) had to be inquired first. Consequently, compared with basic rationality, formal equality may be likened to a 'superstructure'. Still, in order for the theory to be methodologically correct, another term must be introduced, namely, 'prescriptive equality': the *descriptive* stage is qualified as basic equality, while the *prescriptive* stage is at issue when formal equality is concerned. Prescriptive equality is the demand that those who are basically equal must be treated equally; formal equality is its (relatively) concrete realization. My perspective differs from Smith's, who not only clings to a different conception of 'basic equality' but also includes the prescriptive aspect into the conception: "The core idea of basic equality is well known, at least intuitively; we should treat people as equals." (Smith, 2011, p. 6).

The problem of bridging the gap between 'what is' and 'what ought to be' in ethics, famously addressed by Hume (1896, p. 469), is avoided here, since no moral duty is involved: 'prescriptive' has no moral meaning and prescriptive equality is simply the abstract form of formal equality. Likewise, 'normative' may have a moral or an amoral meaning; 'normative equality' is, accordingly, an equivalent of 'prescriptive equality'. The normative dictates that follow from a number of laws may serve as an illustration; for example, from a legal stance it is irrelevant whether one abstains from committing a murder if the desire to do so exists as a result of one's perceived moral duty to refrain from acting immorally, in which case the moral norm is (at the same time as the legal norm itself) a directive, or because one fears that one will be identified as the perpetrator and subsequently (probably) be tried and sentenced, see Kant (1907, pp. 214-225) for the distinction between a legal and a moral duty.

Hume rightly maintains that it is problematic to infer a moral norm from a state of affairs. This is one of the reasons why the factual and the normative domains

are separated by Kant, but this raises new problems, such as those which were addressed in section 1. In the case of basic rationality, conversely, the very fact that one is basically rational provides the reason why one must act in accordance with the dictates of formal equality, no moral considerations being decisive.

The answer to the question of why beings who are basically rational must be treated equally and have the same rights is that those beings realize that a reluctance to grant (or acknowledge the existence of) rights in the case of beings who are, like themselves, basically rational is inconsistent and brings with it the risk of an insurrection, as was argued above. The dictates of prescriptive equality are thus derived from basic rationality, which solves Hume's problem by denying its relevance. Prescriptive equality is, as has already been observed, the abstract form of formal equality, which, in turn, includes political equality and legal equality. An individual who is basically rational has an interest in accepting prescriptive equality, and thus in respecting the rights of others who are, like the individual itself, basically rational.

Material Equality

The foregoing suggests that the relevant aspects of legal and political equality have now been discussed, but specifying *formal* equality as the (relatively) concrete realization of prescriptive equality appears to overlook the dimension of *material* equality. Formal equality is focused on the principle, which means, applied to equal treatment, that the *result* of equal treatment is no decisive consideration: two or more beings are treated equally, regardless of what the result may be. The focus of attention in the case of material equality, by contrast, is precisely that: the result. 'Material equality' (in some respect) does not mean (precisely) the same result (in that respect), unless 'equality' is taken to mean sameness or, again, 'identity'.

This – simplified – comparison between formal and material equality suggests a dichotomy, but the domains of formal and material equality overlap, so that the principles may be said to converge, provided that 'material equality' is interpreted broadly. This becomes apparent from the following – typical – case of formal equality. An employer may not discriminate between prospective employees on the basis of race or sex (save for special cases, for example when the lead for Shakespeare's *Othello* must be cast and it is considered justified to limit the search for candidates to black men). Allowing discrimination would conflict with the dictates of formal equality, but also with those of material equality, since it would have

relevant *consequences* for those who would be discriminated against: the *result* (in terms of income, for example) is at issue here.

'Material equality' may be specified in a number of ways (apart from the interpretation that was mentioned above, which equates it with identity). The issue that it is difficult to say, or even imagine, how material equality may in some cases be realized, and how, for instance, the suffering – supposing this is experienced – of someone who is disabled may be compensated, apart from benefits for those who are, due to their disability, unable to provide for themselves, must be forgone here, just like the difficulty that there are different respects in which the result may be equal (Phillips, 2004, p. 1). Material equality cannot – unless the identity interpretation is accepted – be considered in binary terms, in contrast to formal equality, where those who are basically equal are either treated equally (and have the same rights) or not. Again, formal equality is concerned with equal treatment, irrespective of the effects of such treatment, while in the case of material equality, the result is what is decisive.

'Result' has a broader range than 'outcome', since it captures both equality of opportunity and equality of outcome. (Incidentally, the meanings of 'outcome' and 'result' might have been reversed; the reason why these terms are employed with their respective meanings is to avoid confusion, given the generally accepted meaning of 'equality of outcome', which is not, however, to be taken to imply that that there is consensus with respect to the precise meaning.) What, then, does an equal result mean? It may be equated with what Sen refers to as the 'equality of what', which may be specified on the basis of, for example, incomes, opportunities, achievements, and rights (Sen, 1992, p. 12).

Important perspectives in this respect are the following: equality of opportunity, equality of primary goods, equality of resources, equality of capabilities, and equality of well-being. These perspectives, apart from equality of opportunity, may be categorized under the heading 'equality of outcome'; this testifies to the relevance of the distinction between 'result' and 'outcome'. It is not possible to discuss these perspectives in detail here, but for the purposes of the present inquiry, a short presentation should suffice.

Equality of opportunity expresses the aim to provide all individuals with the same opportunities to realize the goals they want to achieve. The import of the equality aspect is that no irrelevant differences are accepted. An employer may, for example, use intelligence as a criterion in the hiring process, if this is relevant for the job,

whereas selecting an employee on the basis of race is not acceptable (save for special cases; the *Othello* example may again be mentioned here). There is an important similarity or overlap with formal equality (as the fact that the same example may be used attests): the *starting position* must be equal. Equality of opportunity is distinguished from equality of outcome, but shares with it that its goal is an equal *result* (for example the result that an employee is hired who would not even have the opportunity to apply for the job in the first place had the principle of equality of opportunity not been respected).

Rawls stresses the importance of equality of opportunity (Rawls, 1999, pp. 54 and 62), but complements this with other considerations, specifically on the basis of *equality of primary goods*, so as to be able to present a balanced account. Primary goods are defined as "[...] things that every rational man is presumed to want." (Rawls, 1999, p. 54). This formulation is somewhat abstract, but Rawls indicates that such goods may be rights, liberties, opportunities, income and wealth. Some of these musts, according to Rawls, be distributed equally, in accordance with the second principle of justice (Rawls, 1999, p. 266).

Equality of resources, in the version defended by Dworkin, entails an equal distribution of means; an unequal distribution is not unacceptable, but only if it results from choices the individuals have made (Dworkin, 2011, p. 3).

Equality of capabilities, with Sen as a main representative (1992, pp. 4-5), focuses on developing the capabilities one may employ in shaping one's life. For example, a physically disabled person who is not mentally impaired may function 'normally' (and in the relevant respects equally as those who are not similarly disabled) if a (mobility) aid is provided, so that he can earn an income.

Equality of well-being stresses, as the names indicates, well-being. This is difficult to conceptualize (objectively), which makes it hard to determine whether the goal of equality of well-being is met. Here, too, an example of someone who is disabled is useful (Rioux, 2016, p. 482).

It is difficult to say on what basis a basically rational being is to decide which perspective on material equality is the 'right' one, if such a basis, waiting to be discovered, exists at all. Perhaps it cannot be decided which view is correct, namely, if preferences are decisive (Kelsen, 1953, pp. 8-9). Those who deem such a viewpoint (too) relativistic and hold that a 'right' political view is possible must confront a great burden of proof; I will leave this issue here, though, as it is a mere aside to the main issue.

Rawls' Attempt at Integrating Basic, Formal, and Material Equality

Acknowledging basic rationality as the specification of basic equality does not provide a cogent reason to opt for a specific view of material equality, as is the case with respect to formal equality: several views are compatible with basic rationality.

I have argued that material equality cannot, in contradistinction to formal equality, be conceived as a binary matter (with the exception of the identity interpretation), but one may, alternatively, hold that the analysis may still be based on a two-level structure, namely, if a perspective such as Rawls' is accepted, one of whose main ideas is the following:

> "Somehow we must nullify the effects of specific contingencies which put men at odds and tempt them to exploit social and natural circumstances to their own advantage. Now in order to do this I assume that the parties are situated behind a veil of ignorance. They do not know how the various alternatives will affect their own particular case and they are obliged to evaluate principles solely on the basis of general considerations." (Rawls, 1999, p. 118).

Importantly, Rawls does not make a clear distinction between the descriptive and the prescriptive domains. As I have indicated, the first domain is the domain where individuals' *factual* and *basic* equality is to be localized while *prescriptive* equality is associated with the second domain. Rawls says:

> "It seems reasonable to suppose that the parties in the original position are equal. That is, all have the same rights in the procedure for choosing principles; each can make proposals, submit reasons for their acceptance, and so on. Obviously, the purpose of these conditions is to represent equality between human beings as moral persons, as creatures having a conception of their good and capable of a sense of justice." (Rawls, 1999, p. 17).

On the one hand, Rawls addresses the given that the parties are equal, thus referring to the *descriptive* domain and thereby to the aspect of *factual* equality. On the other hand, he states that they have the same (procedural) rights, which is a *prescriptive* element. Since Rawls says 'That is', he – unjustifiably – identifies the descriptive and prescriptive domains.

In any event, Rawls argues that the principles of justice, the second of which concerns the arrangement of social and economic inequalities (Rawls, 1999, p. 266), are accepted by "[...] free and rational persons concerned to further their own in-terests", or "[...] to advance their interests [...]" (Rawls, 1999, pp. 10 and 102). While I do not differentiate between 'reasonable' and 'rational' (as I remarked in section 2), Rawls does not consider them synonyms (Rawls, 2001, pp. 6, 82 and 89).

At the same time, Rawls does not maintain that advancing or furthering one's interests is the decisive motivation in determining what the optimal arrangement might be. There is "[…] a definite limit on the strength of social and altruistic motivation" (Rawls, 1999, p. 248), but because one is unaware of one's own position, the individual interests are no decisive factors: "The veil of ignorance prevents us from shaping our moral view to accord with our own particular attachments and interests" (Rawls, 1999, p. 453).

For an egoist, i.e., "someone committed to the point of view of his own interests", only the own interests are relevant (Rawls, 1999, p. 497). Still, Rawls' conception of 'egoists', who are defined as "individuals with only certain kinds of interests, say in wealth, prestige, and domination" (Rawls, 1999, p. 12), is too narrow, on the basis of the following consideration. As long as one remains situated behind the veil of ignorance, one does not know what one's position will be once the veil will have been removed. An explanation why one would be motivated to accept the principles of justice may be found on the basis of a broader conception of 'egoism' than Rawls'.

Rawls holds that moral persons are the subjects of the principles of justice because "[…] they are capable of having (and are assumed to have) a conception of their good (as expressed by a rational plan of life) […] and […] are capable of having (and are assumed to acquire) a sense of justice, a normally effective desire to apply and to act upon the principles of justice, at least to a certain minimum degree" (Rawls, 1999, p. 442), but why the principles should, as Rawls says, be associated with morality (Rawls, 1999, pp. 414-415) is not clear. Accepting the principles from behind the veil because one does not know what will happen once it is lifted may be explained without an appeal to moral considerations.

The situation may be likened to the choice for an insurance policy: the position of these persons may turn out not to be favorable without the insurance policy in place, which incentivizes them to opt for it. The comparison with an insurance policy may come across as somewhat irrelevant, but is justified by the fact that the veil is itself part of the thought experiment. Someone who *did* have relevant information (and for whom the veil was transparent) would, if the conditions were (and presumably remained) favorable, see no need to agree with the consequences of the second principle, just as someone who is (somehow) sure that there will be no fire will not be motivated to take out fire insurance. If the consideration that certain principles must be accepted on account of their moral or just nature were decisive, the veil would be redundant.

Apart from this theoretical issue, it is not justified, with respect to the choice one will make from behind the veil, to hold, without additional reasons, that Rawls' second principle would be accepted universally. Some may want to risk the chance that they will be disadvantaged if this means that the contrary, namely, that they will be advantaged, could be the case, while others, who are risk-averse, may regard Rawls' proposal favorably.

What Rawls has not demonstrated is, first, on what basis, other than basic rationality, formal equality may be defended, an appeal to morality not being warranted unless either a sufficient meta-ethical analysis accompanying that appeal is proffered or self-evident principles are involved, neither of which conditions is met, and, second, why the second principle of justice should be accepted rather than an alternative. As for the second point, it may also be leveled against those who promote such an alternative, for the simple reason that what they argue may ultimately be reduced to a matter of preference, which, since preferences seem immune to (further) analysis, means that the limits of what a theory may accomplish appear to have been reached.

Which of the perspectives with respect to 'material equality' is the correct one (if 'correct' may even be said to be the proper term here) cannot, then, be said, at least not on the basis of the present inquiry. Each perspective, including Rawls', may be defended, but which arguments should prevail over others is difficult and perhaps even impossible to say without appealing to one of the perspectives, which would not be instrumental in convincing any of the adherents to the alternative perspectives, as they would not be confronted with a (new) reason to abandon their beliefs in favor of others. The upshot of this state of affairs is that material equality is ultimately to be decided by one's preferences. This may also be said of formal equality, but the variety of preferences is less problematic in that case, since it merely concerns the specific contents of legal and political equality.

Conclusion

Factual equality exists in a number of respects. Basic equality is a specification (qualified by those who are themselves basically equal with respect to the characteristic that serves to identify it). It serves as the basis for formal equality. I have argued that basic rationality is the most credible specification of basic equality in deciding which beings are to be the subjects of formal equality. Formal equality may thus be said to be derived from basic rationality. The same cannot be said of material equality: a number of perspectives are compatible with basic rationality.

I would respond to the objection that I have not proved that an alternative moral view, regardless of whether its adherents appeal to 'egalitarianism', cannot be defended on account of the mere given that I would not be able to provide the requested proof (just as I cannot prove that unicorns do not exist) that there is no need for me to do so, the burden of proof that such an alternative view would indeed be superior or preferable to what I have argued being on the adherents of such a view. A moral perspective is not necessarily incompatible with the amoral view I have outlined: a moral view may be conceived as potentially complementary to the basic structure that consists of basic rationality, formal equality and (a conception of) material equality. Those who aspire to provide such an additional theory are of course free to do so, but would be advised to match their aspirations to the critical stance that is required to properly evaluate them.

Those who are basically rational may accept what I have presented, but it would be unrealistic to expect that basically rational beings will also always *act* rationally. It seems wise, then, to remain vigilant and not to take the status quo for granted.

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